



January 26, 2007

HOUSE BILL No. 1366

DIGEST OF HB 1366 (Updated January 23, 2007 11:15 am - DI 107)

Citations Affected: IC 11-8; IC 11-10.

Synopsis: Community transition program. Establishes a 180 day community transition commencement date for offenders who have been accepted and assigned to a reentry court program. Requires the department of correction (department) to notify a community transition program (CTP) at least 120 days before an offender is assigned to the CTP, and requires the department to provide the CTP with certain information about the offender. Permits an offender to make a written statement regarding the offender's participation in a CTP, and removes a provision permitting an offender to delay participating in a CTP. Authorizes the department to delay an offender's assignment to a CTP if the offender is participating in a departmental program. Authorizes the department to terminate an offender's participation in a CTP if the offender violates CTP rules, establishes a procedure for a CTP to conduct disciplinary hearings, and requires the department to train CTP employees in procedures for conducting a disciplinary hearing. Requires a CTP to notify the department within 24 hours if an offender is absent without authorization. Makes other changes and conforming amendments. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2007.

**Foley, Lawson L, Crawford,
Thomas**

January 16, 2007, read first time and referred to Committee on Judiciary.
January 25, 2007, reported — Do Pass. Recommitted to Committee on Ways and Means.

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January 26, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1366

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-1-5.6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5.6. **(a) Except as**
3 **provided in subsection (b)**, "community transition program
4 commencement date" means the following:

5 (1) Not earlier than sixty (60) days and not later than thirty (30)
6 days before an offender's expected release date, if the most
7 serious offense for which the person is committed is a Class D
8 felony.

9 (2) Not earlier than ninety (90) days and not later than thirty (30)
10 days before an offender's expected release date, if the most
11 serious offense for which the person is committed is a Class C
12 felony and subdivision (3) does not apply.

13 (3) Not earlier than one hundred twenty (120) days and not later
14 than thirty (30) days before an offender's expected release date, if:

15 (A) the most serious offense for which the person is committed
16 is a Class C felony;

17 (B) all of the offenses for which the person was concurrently

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or consecutively sentenced are offenses under IC 16-42-19 or IC 35-48-4; and

(C) none of the offenses for which the person was concurrently or consecutively sentenced are listed in IC 35-50-2-2(b)(4).

(4) Not earlier than one hundred twenty (120) days and not later than thirty (30) days before an offender's expected release date, if the most serious offense for which the person is committed is a Class A or Class B felony and subdivision (5) does not apply.

(5) Not earlier than one hundred eighty (180) days and not later than thirty (30) days before an offender's expected release date, if:

(A) the most serious offense for which the person is committed is a Class A or Class B felony;

(B) all of the offenses for which the person was concurrently or consecutively sentenced are offenses under IC 16-42-19 or IC 35-48-4; and

(C) none of the offenses for which the person was concurrently or consecutively sentenced are listed in IC 35-50-2-2(b)(4).

(b) "Community transition program commencement date" means one hundred eighty (180) days before an offender's expected release date, if:

(1) a reentry court certified by the Indiana judicial center under IC 33-23-14-9 has accepted the offender into the reentry court program; and

(2) the department has assigned the offender to the reentry court program.

SECTION 2. IC 11-10-11.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. This chapter applies to a person:

(1) who is committed to the department under IC 35-50 for one (1) or more felonies; ~~and~~

(2) against whom a court imposed a sentence of at least two (2) years;

(3) who has been accepted into a reentry court program by a reentry court certified by the Indiana judicial center under IC 33-23-14-9; and

(4) who has been assigned by the department to the reentry court program described in subdivision (3).

SECTION 3. IC 11-10-11.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) ~~Not earlier than sixty (60) days and not later than forty-five (45)~~ **At least one hundred twenty (120) days** before an offender's community transition program commencement date, the department shall give written notice of the

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offender's eligibility for a community transition program to each court that sentenced the offender for a period of imprisonment that the offender is still actively serving. The notice must include the following information:

- (1) The person's name.
- (2) A description of the offenses for which the person was committed to the department.
- (3) The person's expected release date.
- (4) The person's community transition program commencement date designated by the department.
- (5) The person's current security and credit time classifications.
- ~~(6) A report summarizing the person's conduct while committed to the department.~~
- ~~(7)~~ (6) Any other information that the department determines would assist the sentencing court in determining whether to issue an order under IC 35-38-1-24 or IC 35-38-1-25.

(b) The department shall provide each requesting community transition program with access to a participant's progress report, including a detailed description of any medical, substance abuse, or mental health issues that may require treatment by a community transition program.

~~(b)~~ (c) If the offender's expected release date changes as the result of the loss of credit time after notice is sent to each court under this section, the offender may become ineligible for a community transition program.

~~(c)~~ (d) If the offender's expected release date changes as the result of the gain of credit time after notice is sent to each court under this section, the offender may be assigned to a community transition program if the department determines that:

- (1) a sufficient amount of time exists to allow a court under IC 35-38-1-24 or IC 35-38-1-25 to consider a written statement described in section 4.5 of this chapter; and
- (2) an offender will have at least thirty (30) days remaining on the offender's sentence after the court's consideration of a written statement under subdivision (1), calculated as follows:
 - (A) Beginning on the date the department will assign the offender to a minimum security classification and place the offender in a community transition program.
 - (B) Ending with the recalculated expected release date.

~~(d)~~ (e) The department shall notify each court whenever the department finds that an offender is ineligible for the program because of a change in the person's credit time.

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SECTION 4. IC 11-10-11.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. The department shall send a copy of a notice required under section 2 of this chapter to the prosecuting attorney where the person's case originated. The notice under this section ~~need~~ is not **required to** include the information described in section ~~2(6) through 2(7)~~ **2(a)(6), 2(b), and or section 3** of this chapter. However, upon request to the sentencing court, the court receiving the notice under section 2 of this chapter shall permit the prosecuting attorney to review and obtain copies of any information included in the notice.

SECTION 5. IC 11-10-11.5-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4.5. (a) Before the department may assign an offender to a minimum security classification and place the offender in a community transition program, the department shall notify:

(1) ~~the offender and~~ any victim of the offender's crime of the right to submit a written statement regarding the offender's assignment to the community transition program; and

(2) the offender ~~of the right to that the offender may~~ submit a written statement ~~objecting to regarding~~ the offender's placement in a community transition program;

to each court that sentenced the offender to a period of imprisonment that the offender is actively serving. If the name or address of a victim of the offender's crime changes after the offender is sentenced for the offense, and the offender's sentence may result in the offender's assignment to the community transition program, the victim is responsible for notifying the department of the name or address change.

(b) ~~An offender or~~ A victim of ~~the an~~ offender's crime who wishes to submit a written statement under subsection (a)(1) must submit the statement to each court and the department not later than ten (10) working days after receiving notice from the department under subsection (a).

(c) ~~An offender's written statement objecting to the offender's placement in a community transition program under subsection (a)(2) must be submitted to each court and the department:~~

(1) ~~not later than ten (10) working days after receiving notice from the department under subsection (a); or~~

(2) ~~before the offender is transported under section 7 of this chapter;~~

~~whichever occurs first.~~

SECTION 6. IC 11-10-11.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) The person or

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entity receiving the offender under section 7 of this chapter shall transfer the offender to the intake person for the community transition program.

(b) As soon as is practicable after receiving the offender, the community transition program shall provide the offender with a reasonable opportunity to review the rules and conditions applicable to the offender's assignment in the program.

(c) The department may take disciplinary action under IC 11-11-5 against an offender who:

(1) has been assigned to a minimum security classification and placed in a community transition program; and

(2) refuses to participate in the community transition program.

(d) The community transition program may take disciplinary action under sections 11 and 11.5 of this chapter against an offender who refuses to participate in the community transition program.

(e) If an offender is absent without authorization from:

(1) the offender's residence;

(2) the offender's workplace;

(3) a program that the offender is required to attend; or

(4) any other location where the offender is required to be;

the community transition program shall notify the department of the offender's unauthorized absence not later than twenty-four (24) hours after the community transition program discovers the offender's absence.

SECTION 7. IC 11-10-11.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. A person assigned to a community transition program shall remain in the assignment until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, unless:

(1) the community transition program causes the person to be returned to the department for reassignment from the community transition program to a program or facility administered by the department under section 11.5(b) of this chapter; or

(2) the department terminates the person's participation in the community transition program and reassigns the person to the department under section 11.5(c) of this chapter.

IC 11-10-12-2 does not apply to a person who completes an assignment in a community transition program.

SECTION 8. IC 11-10-11.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. **(a)** While assigned to a community transition program, a person must comply with:

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(1) the rules concerning the conduct of persons in the community transition program, including rules related to payments described in sections 12 and 13 of this chapter, that are adopted by the community corrections advisory board establishing the program or, in counties that are not served by a community corrections program, that are jointly adopted by the courts in the county with felony jurisdiction; and

(2) any conditions established by the **department or the** sentencing court for the person.

(b) Before imposing any disciplinary action, a community transition program shall afford a person charged with misconduct a hearing to determine the person's guilt or innocence and, if the person is found guilty, take the appropriate action. The charged person may waive the right to a hearing. In connection with the hearing, the person is entitled to:

(1) have at least twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak on the person's own behalf;

(5) call witnesses and present evidence, unless the person conducting the hearing finds that to do so would subject a witness to a substantial risk of harm or would result in the admission of irrelevant or repetitive testimony;

(6) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;

(7) have immunity if the person's testimony is used in any criminal proceeding;

(8) have the person's record expunged of any reference to the charge if the person is found not guilty or if a finding of guilt is later overturned; and

(9) be reimbursed for state wages lost due to action taken pending the hearing if the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(c) Not later than three (3) days after having been found guilty of a violation under this section, the person may petition the department to review the appropriateness of the disciplinary sanction. A petition for departmental review does not stay the

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imposition of a disciplinary sanction.

SECTION 9. IC 11-10-11.5-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11.5. (a) ~~Except as provided in section 4.5 of this chapter,~~ An offender is not entitled to refuse to be placed into a community transition program. However, ~~the offender may request that an assignment to a community transition program be delayed in consultation with the community transition program and the sentencing court, the department may delay an offender's assignment to a community transition program~~ if the offender will be enrolled in department programming on the community transition program commencement date designated by the department.

(b) The department shall train community transition program employees who conduct disciplinary hearings under section 11 of this chapter to conduct the hearings in accordance with the procedures used for disciplinary hearings conducted by the department.

~~(b)~~ **(c)** The community transition program, following a hearing **held in accordance with section 11 of this chapter**, and upon a finding of probable cause that the offender has failed to comply with a rule or condition under section 11 of this chapter, may:

(1) request a court to issue a warrant ordering the department to immediately:

(A) return the offender to the department; or

(B) reassign the offender to a program or facility administered by the department; or

(2) take disciplinary action against an offender who violates rules of conduct. Disciplinary action under this subdivision may include the:

(A) reassignment to credit Class II or Class III under IC 35-50-6-4; and

(B) loss of earned credit time under IC 35-50-6-5.

(d) In addition to any penalty imposed under subsection (c), if the community transition program finds probable cause that the offender has failed to comply with a rule or condition under section 11 of this chapter, the department may terminate the offender's participation in the community transition program and reassign the offender to the department.

(e) As soon as possible after instituting a disciplinary proceeding under this section, the community transition program shall forward copies of all documents associated with the proceeding to the:

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1 (1) department;
2 (2) sentencing court; and
3 (3) offender.
4 **The community transition program shall retain the original**
5 **documents unless requested by the department or the sentencing**
6 **court.**
7 ~~(c)~~ (f) An offender who is returned to the department under
8 subsection ~~(b)~~ (c) or (d) is not eligible for assignment to another
9 community transition program for the duration of the sentence or
10 sentences the offender is actively serving.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1366, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

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